IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: August 21, 2007

\+ **C.R.P.No.402/2000**

SHRI TULSI RAM ..... PETITIONER
Through: Mr.Keshav Dayal, Sr.Advocate
with Mr.Arun K.Beriwal, Advocate

VERSUS

SHRI RAM KISHAN DASS & OTHERS ..... RESPONDENTS
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

1. Whether reporters of Local papers may be allowed to see the judgment? YES
2. To be referred to the reporter or not ? YES
3. Whether the judgment should be reported in the Digest? YES

ANIL KUMAR, J.
*

1. The petitioner has challenged the order dated 18th November, 1999 of the Additional Rent Controller dismissing his application for leave to defend and contest the eviction petition filed by the respondents under Section 25B of the Delhi Rent Control Act, 1958.

2. The respondents filed the eviction petition against the petitioner under Section 14(1)(e) read with Section 25B of Delhi Rent Control Act for eviction of petitioner on the ground that the respondents bona fide require the premises in dispute for their residence. The respondents contended that Smt. Rama Devi, predecessor-in-interest of respondents Nos.1 to 6 and respondent No.7, Smt. Shakuntala Devi had earlier filed another eviction petition being E-220/95 against the petitioner under Section 14(1)(e) read with Section 25B of Delhi Rent Control Act. During the pendency of earlier eviction petition filed by Smt. Rama Devi, she expired on 18th March, 1996 and her legal heirs, respondents Nos.1 to 6 did not file the application for substitution as the legal representatives in the eviction petition and consequently the petition abated and the petition was, thereafter, withdrawn on 29th January, 1997. The order passed while withdrawing the eviction petition on 29th January, 1997 is as under:-

> "29.01.1997
>
> Present: Counsel for Petitioner
> L.R.Mohinder Kumar in person
>
> Shri Aggarwal, wants to make a statement. Let it be recorded.
>
> Statement of Shri O.P.Aggarwal, counsel for the L.Rs of the deceased petitioner and the other petitioners. I on behalf of the LRs of the deceased petitioner withdraw the petition as they

want to file a fresh petition. Rama Devi died on 19.03.1996.

Additional Rent Controller

RO&AC

In view of the statement of the counsel for the LRs, petition is dismissed as withdrawn.

A.R.C"

3. The respondents Nos.1 to 6 contended that after the demise of Late Smt.Rama Devi they had become the co-owners along with respondents No.7. The eviction petition was filed by the respondents contending that respondent No.1 is an aged man and he requires one room and one kitchen for himself and for his married daughter Mrs. Suman, who usually comes and stays with the respondent No.1. The requirement of three rooms, one kitchen and one store was pleaded for respondent No.2, his wife and his two sons namely Navin aged 23 years and Anil aged 22 years and two daughters namely Ms.Anita and Savita alleged to be of marriageable age whose marriage had not been possible on account of paucity of accommodation. The requirement of respondent No.3 pleaded was of three rooms for himself, his wife and his three sons namely Sunil 21 years, Praveen 23 years and Nitin 18 years and one daughter Babita aged 24 years. Respondent No.3 pleaded that all the children are of marriageable age and they require premises urgently. The requirement of respondent No.4 Laxmi Narain was pleaded for three rooms, one kitchen for himself, his wife, two sons namely

Amit 20 years and Nitesh 18 years and one married daughter who comes and usually resides with respondents No.4. The requirement of respondent No.5 Mahender Kumar was pleaded for two rooms and a kitchen for two daughters namely Neha and Kumari Sonal and one son namely Chintu aged 4 years. The requirement of respondent No.6 was pleaded for two rooms and one kitchen for himself, his wife and one son namely Vikalp and one daughter namely Kumari Khushboo. Two rooms were pleaded for respondent No.7 for herself and her husband and two more rooms for respondent No.7's married son namely Satish Kumar and his one son namely Tapan.

4. The respondent No.2 also pleaded two rooms for her other married son namely Sunil Kumar and his wife and his two daughters namely Kumari Mrinal aged 8 years and Kumari Deepika aged about 5 years and respondent No.7 also pleaded for one room for her married daughter namely Smt.Anita. The respondents, therefore, pleaded at least 14 rooms, 6 kitchens and one store for respondents Nos.1 to 6 and seven rooms and a kitchen for respondents No.7 and thus total requirement of 21 rooms, three kitchens and two stores was pleaded, whereas respondents Nos.1 to 6 have only six rooms, one kitchen and respondents No.7 has only seven rooms and one kitchen. The portion shown in yellow colour in the plan filed by the

respondents is with respondents Nos.1 to 6 and the portion in green colour was stated to be in possession of respondents No.7 and the portion in possession of the petitioner was shown in red colour. The petitioner is stated to be in possession of one room, one kitchen and a small verandah on the ground floor.

5. The application for leave to defend was filed by the petitioner who also filed an affidavit along with an application under Section 25B contending inter-alia that he had always been a tenant under Smt. Shakuntala and there is no relationship of landlord and tenant between the petitioner and respondents Nos.1 to 6. The petitioner also raised an issue that sons and husband of respondents No.7 are the necessary parties. The ownership of the respondents was not admitted and it was contended that the respondents have concealed the facts in as much as the date of death of Smt.Rama Devi was not disclosed and the name of the person who had withdrawn the earlier eviction petition filed by Smt. Rama Devi had also not been given.

6. The petitioner disclosed in the affidavit seeking leave to defend and contest the eviction petition that he is a tenant only under the respondent No.7 on a monthly rent of Rs.35/- per month in respect of one big room, one

small room, one kitchen, verandah with other common amenities. According to the petitioner the property was partitioned during the life time of Smt.Rama Devi between her and Smt.Shakuntala Devi, respondents No.7 in presence of the petitioner. Relying on the fact that there are two chowks and four stair cases in the property, it has been contended that in the portion which has fallen in the share of Late Smt.Rama Devi now there is one chowk and in the portion of Smt.Shakuntala Devi there is another chowk and two staircases. In the circumstances it was contended that the portion under the tenancy of the petitioner, lies exclusively in the portion which is of Smt.Shakuntala Devi.

7. In support of the plea of partition of the property between Smt.Rama Devi and Smt. Shakuntala Devi, the petitioner contended that there was another tenant namely Sh. Naurang Lal who is in the portion which has fallen to the tenancy of Smt.Rama Devi and after her demise he is paying rent exclusively to respondents Nos.1 to 6 and not to Smt.Shakuntala Devi and rent receipts were issued by Sh.Ram Kishan Dass, husband of Smt.Rama Devi, respondents No.1. The petitioner also disclosed on affidavit that another tenant Sh.Ram Lal who is in the portion which has fallen in the share of Smt.Shakuntala Devi is paying rent exclusively to Smt. Shakuntala Devi and rent receipts are being issued to him by her husband and not by

respondents Nos.1 to 6. The petitioner also produced photocopies of six rent receipts and he contended that all the rent receipts are signed by the husband and sons of Smt. Shakuntala Devi, respondent no.7 and not by respondent nos. 1 to 6.

8. The petitioner also disclosed the fact that earlier the property was having only two floors that is ground floor and first floor and later on the mezzanine floor and second floor were added by Smt.Shakuntala Devi, respondents No.7 in her portion at her cost and expense and Smt.Rama Devi had also constructed another mezzanine floor in her portion and she had also fixed an iron staircase to reach the mezzanine floor. According to the petitioner the plan of the property filed by the respondents is incomplete and does not disclose the full accommodation. The petitioner also filed another plan of the entire property bearing No.1734, Nai Basti, Naya Bazar, Delhi showing the portion in possession of respondent Nos.1 to 6 in yellow and the portion occupied by Smt.Shakuntala Devi, respondent No.7 in green. The petitioner categorically contended that a person living in the portion of Smt. Shakuntala Devi, respondents No.7 cannot go to the portion of respondents Nos.1 to 6 either on the first floor or on the second floor or on the roof of the second floor, as the two portions are separate and similarly no person can

come from the portion which is in occupation of respondents Nos.1 to 6 to the portion which is in occupation of respondents No.7 to substantiate his plea that there had been partition between Smt.Rama Devi and Smt.Shakuntala Devi and that the petitioner is a tenant only under Smt.Shakuntala Devi.

9. The petitioner contended that respondent Nos.1 to 6 have been impleaded as a party with a view to create paucity of accommodation and to make out a false case of bona fide requirement and the need of respondent Nos.1 to 6 cannot be considered and the accommodation available with respondent No.7, landlord of the petitioner, is more than sufficient for herself and her family members dependant on her. The petitioner also filed the copies of rent receipts of Sh.Naurang Lal who is a tenant in the portion of respondents Nos.1 to 6 and all the rent receipts are signed by Sh.Ram Kishan Dass. The petitioner also filed the copies of the rent receipts issued to him which are signed exclusively by Smt.Shakuntala Devi or her husband or by sons to contend that there have been partition between respondent Nos.1 to 6 and respondent No.7.

10. The petitioner in his application for leave to defend and contest the eviction petition contended that a lease deed was duly got signed from the

petitioner by the previous owner and the lease deed was kept by the previous owner and no copy thereof was given to the petitioner and according to the said lease deed the premises was let out for residential cum commercial purpose.

11. The petitioner also sought leave to defend and contest the eviction petition on the ground that there has been no change in circumstances when the earlier eviction petition was filed by Smt.Shakuntala Devi and Smt. Rama Devi and after the demise of Smt. Rama Devi the present eviction petition, thereafter, had been filed by respondents Nos.1 to 6 & 7 without the permission of the rent controller to file another eviction petition on the same cause of action.

12. The respondents contested the leave to defend and contest the eviction petition on the ground that neither the petitioner nor any member of his family is residing in the suit premises and only the servant of the petitioner and his paying guest are residing in the suit premises. Regarding the petition of the respondents being barred by res judicata it was contended that after the death of Late Smt. Rama Devi, respondents No.7, Smt. Shakuntala Devi had withdrawn the petition for filing the fresh petition as the legal

representatives of Late Smt. Rama Devi, present respondent Nos.1 to 6 were not impleaded as a party in the earlier eviction petition bearing No.E-220/1995.

13. Regarding the accommodation with respondent Nos.1 to 6 and respondent No.7 they contended that they have only one chowk in the property and the two staircases are present since the date of purchase of the property and they are used jointly and there is no separation in the property. The respondents also pleaded that they are collecting the rent jointly and there is no division of the property between the respondents Nos.1 to 6 on one side and respondents No.7 on the other. The respondents admitted that construction was raised by them, however, they stated that joint construction was raised due to great paucity of accommodation and all the respondents are struggling hard due to the paucity of the accommodation. Regarding the plan filed by the petitioner it was stated that a copy of the plan filed by the petitioner has not been supplied and the plan filed by the respondents was reiterated.

14. The respondents opposed the application for leave to defend and contest also on the ground that all the respondents are the co-owners/

landlord of the property and the premises is purely residential and the same was let out only for residential purposes. It was also contended that the ground in the previous petition was the same as in the present petition.

15. The learned Additional Rent Controller considered the pleas and contentions of the petitioner and the respondents and dismissed the application for leave to defend and contest the eviction petition on the ground that the seven respondents are co-owners of the suit premises and reliance was placed by the Controller on the photocopy of the sale deed in respect of the property where the premises in dispute is situated which is in favour of Smt.Rama Devi and Smt.Shakuntala Devi. The learned Additional Rent Controller also relied on the fact, in disbelieving partition between respondents Nos.1 to 6 and respondents No.7, that not a single document in support of the partition between them has been filed. Regarding the purpose of letting it was contended that there is a bald statement by the petitioner that the premises was let out for residential-cum-commercial purposes, however, what commercial activity has been carried out by the petitioner from the premises in dispute, has not been spelt out and, therefore, it was held that the premises was let out for residential purpose only. Disregarding the plan filed by the respondents and considering the plan filed by the petitioner, it

was inferred that there are 23 rooms which include mezzanine floor. Out of the said 23 rooms, two rooms are with the petitioner even according to the allegation of the petitioner there are two more tenants namely Sh.Naurang Lal and Sh.Ram Lal, therefore, for the minimum requirement of the respondents for 21 rooms, the respondents have 19 rooms only and the accommodation available with the respondents is insufficient.

16. The petitioner filed the present petition aggrieved by the order of the learned Rent Controller dated 18th November, 1999. Notice was issued to the respondents. Initially Mr.O.P. Aggarwal, Advocate appeared on behalf of the respondents. The matter was adjourned from time to time for the arguments. For last number of hearings none had appeared on behalf of respondents.

17. The petitioner also filed an application dated 21st November, 2005 for taking into consideration the subsequent facts. According to the petitioner the respondents have constructed a portion of the second floor of the suit premises during 2004-2005 and with the present accommodation constructed on the second floor the total accommodation available with the respondents is 22 rooms, one open Courtyard, two terraces comprising of 8 rooms and one open Courtyard on ground floor, seven rooms and open terrace on the

first floor and seven rooms and one open terrace on the second floor out of which five new rooms were constructed in 2004-2005. The petitioner also filed the photograph showing the newly constructed five rooms on the second floor. The petitioner also filed another plan showing the five new rooms constructed on the second floor and showing the entire accommodation available with the respondents. Accommodation available with the respondents Nos.1 to 6 was shown in yellow colour and accommodation available with respondents No.7 was shown in green colour. During the pendency of the petition, petitioner also expired and it has been pleaded that after the demise of the petitioner, Tulsi Ram his wife Smt. Sumitra Devi who is aged about 70 years is staying in the premises in dispute comprising of only one room and one small room in front thereof and a small kitchen along with a domestic help.

18. The application filed by the petitioner for taking into consideration the subsequent facts has not been contested and no reply to the application has been filed. No one has appeared on behalf of the respondents.

19. I have heard the counsel for the petitioner in detail. The application filed by the petitioner for taking into consideration the subsequent facts has

not been contested by the respondents. Whether the subsequent facts about the construction on the second floor of five more rooms can be taken into consideration or not, for deciding whether the petitioner is entitled for leave to defend and contest the eviction petition. Though the basic rule is that the rights of the party should be determined on the basis of the facts as disclosed on the date of the institution of the petition and the proceedings and the petition should be tried at all stages on the cause of action as it existed at the time of commencement of the petition. This, however, does not mean that the events happening after institution of a petition cannot be considered at all. The court has the power and duty to consider changed circumstances. This would be more appropriate in cases where the relief originally claimed has by reason of subsequent change of circumstances has become in appropriate. In order to shorten litigation, it is required and considered necessary to take into consideration subsequent event which is also necessary to do complete justice between the parties. The Supreme Court considered about consideration of changed circumstances and subsequent facts considering various previous judgments in Kedar Nath Agrawal v. Dhanraji Devi,(2004) 8 SCC 76 ,and held at page 83 at under :

> 18. Before about a century in *Ram Ratan Sahu* v. *Bishun Chand, 11 CWN 732* _the High Court of Calcutta observed that there are certain exceptions to the general rule that a suit must be tried in all stages on the cause of action as it existed at the date of its commencement. In

Lachmeshwar Prasad Shukul v. *Keshwar Lal Chaudhuri (AIR 1940 FC 5)* the Federal Court took into account the provisions of the new Act which came into force during the pendency of appeal before the Federal Court.

19. In the leading decision of *Pasupuleti Venkateswarlu* v. *Motor & General Traders (1975) 1 SCC 770,* this Court considered a subsequent event. The plaintiff filed a suit for possession on the ground of personal requirement for starting business and an order was passed in his favour. An appeal against the said order was also dismissed. The tenant filed a revision petition in the High Court. During the pendency of revision petition, the plaintiff acquired possession of another non-residential building. An application for amendment, therefore, was made by the tenant. The High Court allowed the amendment. The landlord challenged the order in this Court. It was contended by the landlord that the High Court had committed an error in taking cognizance of subsequent event which was "disastrous". This Court, however, held that the High Court did not commit any illegality in considering the subsequent event.

20. Following *Lachmeshwar Prasad* 4 law of "ancient vintage", Krishna Iyer, J. stated: (SCC pp. 772-73, para 4)

> " *4* . We feel the submissions devoid of substance. First about the jurisdiction and propriety vis- is circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the *lis* has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is not violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemp late any limitation on this power to

take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. *We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed* ." (emphasis supplied)

21. *Pasupuleti Venkateswarlu* was followed in many cases. In *Gulabbai* v. *Nalin Narsi Vohra (1991) 3 SCC 483,* an order of eviction was passed against the tenant on the ground of bona fide need of the landlord. Subsequent event of shifting family of the landlord to a spacious bungalow constructed by him during the pendency of appeal, was considered by this Court.

22. In *Ramesh Kumar* v. *Kesho Ram(AIR 1992 SC 700)* this Court observed that a court can mould relief taking "cautious cognizance" of subsequent events. The Court also observed that all these depend on factual and situational differences and "there can be no hard-and-fast rule governing the matter".

23. In *Shadi Singh* v. *Rakha (1992) 2 SCC 55* a landlord sued a tenant for ejectment on the ground that the building required thorough repair. During the pendency of the suit, the tenant carried out necessary repair. Taking note of the event, this Court dismissed the suit of the landlord.

24. In *Super Forgings & Steels (Sales) (P) Ltd.* v. *Thyabally Rasuljee (1995) 1 SCC 410* dealing with power of this Court to take note of subsequent events in an appeal under Article 136 of the Constitution, this Court stated that: (SCC pp. 417-18, para 16)

"[T]he power of this Court in an appeal under Article 136 of the Constitution to take cautious cognizance of events and developments subsequent to institution of eviction proceeding and grant, deny or mould the relief sought by a party, in consonance with justice and fair play is not re-

stricted merely because it is exercising its power to deal with an appeal conferred upon it by the Constitution."

25. In *P. Sriramamurthy* v. *Vasantha Raman (1997) 9 SCC 654* an order of eviction was passed in favour of the landlord and against the tenant on the ground of non-payment of rent. During the pendency of appeal before this Court, husband of the landlady retired from service and they needed the premises for personal occupation also. Though the ground was not set up earlier, taking note of subsequent event, this Court allowed the ground to be raised and granted the relief.

26. In *Lekh Raj* v. *Muni Lal (2001) 2 SCC 762* this Court indicated that the law on the subject is well settled. The court should not shut its door on noticing subsequent events. All laws and procedures including functioning of courts are all in aid to confer justice on those who knock its door. The court should interpret the law not in derogation of justice but in its aid. Bringing on record subsequent event, which is relevant, should, therefore, be permitted to render justice to a party. But the court in doing so should be cautious not to permit it in a routine manner. It should refuse the prayer where a party is doing so to delay the proceedings and to harass the other party or doing so for any other ulterior motive. The court should also examine whether the alleged subsequent event has any material bearing on issues involved or would materially affect the result of the suit.

27. In *Om Prakash Gupta* v. *Ranbir B. Goyal (2002) 2 SCC 256* this Court stated: (SCC pp. 262-63, para 11)

> "*11*. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (*i*) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (*ii*) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (*iii*) that such subsequent event is brought to the notice of the court promptly and in accordance with the

rules of procedural law so that the opposite party is not taken by surprise."

28. Strong reliance was placed by the contesting respondents on a decision of this Court in *Rameshwar* v. *Jot Ram(1976) 1 SCC 194* before the High Court as well as before us. In *Rameshwar* the tenant had become "deemed purchaser" under the Punjab Security of Land Tenures Act, 1953. During the pendency of appeal, the "large" landowner died and his heirs became "small" landowners. It was, therefore, contended on behalf of the landowners in appeal that since appeal is continuation of suit, subsequent event of death of the original owner should be considered. This Court, however, refused to take note of subsequent event on equitable considerations. Keeping in view the agrarian reforms, this Court said: (SCC p. 201, para 10)

> "To hold that, if the landlord dies at some distant date after the title has vested in the tenant, the statutory process would be reversed if by such death, his many children, on division, will be converted into small landholders, is to upset the day of reckoning visualised by the Act and to make the vesting provision 'a teasing illusion', a formal Festschrift to agrarian reform, not a flaming programme of 'now and here'. *These surrounding facts drive home the need not to allow futurism, in a dawdling litigative scene, to foul the quick legislative goals* ." (emphasis supplied)

29. In *Gaya Prasad* v. *Pradeep Srivastava (2001)2 SCC 604* an eviction petition was filed in 1978 by the landlord on the ground of bona fide need for use as a clinic by his son. The petition was allowed by the Rent Controller in 1982 and the order was confirmed by the Appellate Authority in 1985. During the pendency of the petition in the High Court, however, the son joined medical service. Relying on the said development, it was contended by the tenant before the High Court that the landlord was no more in need of the premises and the petition was liable to be dismissed. The High Court dismissed the revision petition. The aggrieved tenant approached this Court. It was contended on behalf of the tenant that a subsequent development could not have been ignored by the High Court, particularly when the eviction was sought for personal use and the need no more continued in view of acceptance of service by the son of the landlord. This Court, however, negatived the contention and stated: (SCC p. 609, para 10)

> "10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow-process system subsists. During 23 years, after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly l ong period."

20. From the facts of this case it is apparent that the petitioner is not pleading subsequent facts in order to delay the proceedings or to harass the respondents or for any other ulterior motives. The respondents have not ap-

peared and has contested the application for consideration of subsequent events about the construction of five rooms on the second floor by them. The Supreme Court had held that the subsequent events which are relevant should be allowed to be brought on record in order to render justice to the parties. While deciding whether the subsequent events should be considered or not what also has to be seen is whether subsequent events have any material bearing on issues involved and consideration of subsequent events would materially affect the result of the petition. The petitioner is challenging the order declining leave to defend and contest the eviction petition filed by the respondents on the ground that the total number of rooms available with them are insufficient for them and their family members dependent upon them. The respondents have contended that they have 19 rooms. In case the subsequent events as alleged by the petitioner are correct that the respondents have constructed five rooms on the second floor then their requirement of 22 rooms will be satisfied and the respondents shall not be entitled for an order of eviction against the petitioner in respect of one-room, one small room, kitchen and veranda. Therefore the application of the petitioner for taking into consideration the subsequent events is allowed and petitioner's plea that the respondents have constructed five rooms on the second floor shall also be taken into consideration for deciding whether the leave to de-

fend and contest the eviction petition should be granted to the petitioner or not.

21. This is no more res integra that the scheme of section 25B of Delhi Rent Control Act, 1958 does not contemplate a trial for determining whether leave to defend and contest the eviction petition should be granted to the tenant or not. The jurisdiction to grant leave to contest or refuse is to be exercised on the basis of the affidavit filed by the tenant. In 57 (1995) DLT 781, Ishwari Devi Vs Rallia Ram it was held that while browsing through the affidavit of the tenant, if there emerges averments of facts which on a trial, if believed, would non suit the landlord, the leave ought to be granted. What is to be considered is whether the affidavit for leave to defend and contest the eviction petition is clear, specific, positive and defense raised is bonafide and prime facie not untenable and untrue. While granting or declining leave to defend the disputed questions of facts are not to be determined conclusively by the Court. The inquiry before the court when leave is sought is, therefore, of a limited nature and is intended to determine a very narrow question on the grounds on which leave is sought, whether based on an assertion of fact or of law, would non suit the landlord, if they could ultimately prevail. In 60 (1995) DLT 310; Raj Bahadur Baweja Vs Narender Singh Sahni & ors it was held

that it is distinctly possible that a tenant may fail to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown.

22. The procedure prescribed under section 25B of Delhi Rent Control Act, 1958 is a drastic measure for eviction of tenants particularly, in a statute intended to provide protection to tenants against arbitrary and whimsical action of unscrupulous landlords for their eviction. This was held by the Supreme Court in Manoj Kumar vs Biahri Lal. (2001) 4 SCC 655 at page 659. Therefore, strict interpretation of the provisions is necessary. On a reasonable and purposeful interpretation of the statute, it is clear that if from a perusal of the petition for leave to contest and the affidavit filed with it, the Controller finds that the tenant has pleaded a triable case, then he shall not refuse leave to contest the case, otherwise the provision is liable to be mis-utilized by unscrupulous landlords to get their tenants evicted easily.

23. The petitioner has contended that the requirement of the respondents is artificial and arbitrary inasmuch as the respondent no.7, the landlord of the petitioner, has sufficient accommodation for herself and her family members.

The requirement of other respondents has been pleaded to create the insufficiency of accommodation. In support, petitioner has contended that there had been a partition between Late Smt. Rama Devi and Smt. Shakuntala Devi in his presence. In support of his plea for partition between the two, the petitioner has produced the rent receipts and has contended that they are signed either by Smt. Shakuntala Devi or her husband or son though all of them bear the printed name of Smt. Rama Devi and Smt. Shakuntala Devi. The petitioner has also contended that another tenant in the portion of respondent nos. 1 to 6 is issued receipts by other respondents and not by Smt. Shakuntala Devi. The petitioner has also contended and asserted that there are two chowks in the property and after partition, one chowk has fallen to the share of respondent nos.1 to 6 whereas other chowk has fallen to the share of the respondent no.7. The respondents have denied that there are two chowks and have asserted that the property has only one chowk. The petitioner has also asserted in his affidavit that after partition and on account of construction carried out, it is not possible to go from one portion to other portion of the respondents from inside the property. The learned Additional Controller has declined leave to defend and contest the eviction petition on this ground that the respondent nos. 1 to 6 and respondent no.7 are the co-owners.

24. The assertion of the petitioner is clear and specific that there had been a partition between respondent nos.1 to 6 and respondent no.7 and the rent is collected only by respondent no.7, her husband and her sons. The petitioner has also given the instances of other tenants from whom the rent is collected by respective landlords. If there is partition and respondent no.7 is the landlord and not other respondents, then their requirement is not to be considered and the accommodation available with respondent no.7 is sufficient for herself and her family members. The plea raised by the petitioner, if proved, shall disentitle the respondents for an order of his eviction. The plea for consideration is not whether they are co-owners but whether the requirement of respondent nos. 1 to 6 can be considered on account of partition between the respondent nos. 1 to 6 and the respondent no.7. Plausibility of the defense raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown.

25. The petitioner/tenant has also contended and has raised a plea of additional accommodation acquired by the respondents during the pendency of this revision petition. The petitioner has filed the photographs and has con-

tended that five more rooms have been constructed by the respondents on the second floor. The petitioner has also filed a detailed plan showing the accommodation available with the respondents on different floors. Whether the plan filed by the petitioner is correct and whether the respondents have acquired additional accommodation is a clear, specific and a positive plea which, if proved, shall disentitle the respondents from an order of eviction against the petitioner.

26. The petitioner has also raised the plea about no permission being granted by the Additional Rent Controller while withdrawing the earlier eviction petition filed by late Smt. Rama Devi, predecessor of respondent nos. 1 to 6 on the ground of bona fide requirement. The petitioner has contended that the requirement of the respondents as propounded in the earlier eviction petition was the same as has been alleged in the present eviction petition and since there has been no change in the requirement and circumstances, the present subsequent petition could not be filed without the permission of the Additional Rent Controller before whom the earlier petition was pending and which was withdrawn, as the petition had abated on account of non impleadment of respondent nos. 1 to 6 after the demise of Smt. Rama Devi. This plea of the petitioner also requires consideration on the basis of the

averments made in the earlier eviction petition and evidence, if any, led by the respondents in that petition.

27. In AIR 1977 Delhi 129, Prahlad Dass Vs Bhagirath Lal a single judge of this Court had held Order 23 Rule 1 of the Code of Civil Procedure is applicable to the proceedings under Delhi Rent Control Act, 1958. In AIR 1977 Delhi 121, Aftab Ahmad & anr. Vs Nairuddin & anr it was held that if an application seeking relief is not pressed and got dismissed under order 23 Rule 1, the effect of it would be that the second application seeking same relief would not be maintainable. It was held:

> " The effect of Order 23 Rule 1 read with section 141 is that once an application has been presented claiming a relief and it is not pressed and is dismissed a subsequent application on the very same ground is barred."

28. In the circumstances the inevitable inference is that the petitioner has been able to prime facie make out a case by disclosing such facts which will, if proved shall disentitle the respondents an order of eviction against him. The petitioner was not to prove his pleas on the basis of his affidavit and the documents filed by him. Plausibility of the defense raised and proof of the same are materially different and one cannot bring in the concept of proof at

the stage when plausibility has to be shown. Consequently it is apparent that the Additional Rent Controller has committed an error in declining leave to defend and contest the eviction petition to the petitioner. In the circumstances the impugned order dated 18th November, 1999 passed by the Additional Rent Controller in E-111/1997 titled Sh.Ram Kishan & ors Vs Sh. Tulsi Ram declining leave to defend and contest the eviction petition and passing an order of eviction in respect of tenanted premises in house no.1734, Nai Basti, Naya Bazar, Delhi 110006 is set aside. Revision petition in the present facts and circumstances is allowed and petitioner is granted unconditional leave to defend and contests the eviction petition of the respondents on the ground of bona fide requirement under section 14 (1) (e) read with section 25B of Delhi Rent Control Act, 1958.

29. Parties are directed to appear before the concerned Rent controller on 3rd September, 2007. Record of the eviction petition E-111/1997 titled Sh.Ram Kishan & ors Vs Sh. Tulsi Ram be sent forthwith to the concerned Rent Controller. Considering the facts and circumstances of the present revision petition, the parties are also left to bear their own costs.

August 21, 2007 **ANIL KUMA J.**

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